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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,203	02/27/2004	Leonard Forbes	303.356US4	9063
21186	7590	07/11/2005		
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402-0938				
			EXAMINER	
			WILSON, ALLAN R	
			ART UNIT	PAPER NUMBER
			2815	

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/789,203

**Applicant(s)**

FORBES ET AL.

**Examiner**

Allan R. Wilson

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37-51 is/are allowed.
- 6) ☒ Claim(s) 1-36 and 52-56 is/are rejected.
- 7) ☒ Claim(s) 57-59 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 0405
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 11, 12, 14-16, 18, 19, 21, 22, 24, 25, 28, 30, 31, 33, 34, 36, 52 and 54-56 are rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 4,019,197 to Lohstroh et al. ("Lohstroh").

With regards to claim 1\*, 12, 22, 31, 36 and 52, Lohstroh illustrates in figures 1-10, particularly figure 2, (entire document) forming a memory device comprising a floating gate (storage electrode) 4 of aluminum, which has an electron affinity of about 2.8 eV\*, and an insulation layer 3 of SiO<sub>2</sub> which has an electron affinity of 0.9eV such that a barrier energy between them is less than 3.3 eV ( $2.8 - 0.9 = 1.9$  eV). Lohstroh also teaches the method of operating the device wherein data is stored by changing charge on the floating gate (abstract and col. 1, lines 5-59). Refreshing data based on a data charge retention time that depends upon the barrier energy is an inherent function of the device and since the prior art has the same or better material properties (electron affinity) as the claimed invention it will have the same or better

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\* The value for the electron affinity of aluminum is based on "UPS of Negative Aluminum Clusters" by Taylor et al. *Chemical Physics Letters*, Vol. 152, no. 4.5, 18 Nov. 1988.

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inherent function (e.g. less than 12 volts is used to erase the stored charge)\*. It is considered inherent that the method includes a system with a processor to operate the stored data.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-10, 17, 20, 26, 27, 29 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lohstroh. Though Lohstroh taught the device and method of operating the device of claims 1, 12, 22 and 31, Lohstroh did not specifically teach the claimed operating parameters such as write/erase times, charge retention times or detected signal strength. However, these limitations are considered either inherent in the device/method of Lohstroh or obvious there over. The limitations are considered inherent because they are dependent on the materials/barrier energy for the floating gate and insulator. Because Lohstroh teaches the material properties as instantly taught by applicant and thus achieves a device having the claimed barrier energy, the claimed operating parameters, which are dependent on the barrier energy, are considered inherent. Alternately, the claimed operating parameters are considered merely optimization of that which is known in the art. Faster operation of a device by means of e.g. write/erase times achieves quicker and thus improved performance. As such, the limitations are considered obvious.

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Claims 2, 13, 23 32 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lohstroh et al. in view of 5,032,883 to Wakai et al. Lohstroh taught the device and method of claims 1, 12, 22, 31 and 52 but did not teach the device further comprising an insulator having a permittivity higher than that of silicon dioxide. Wakai teaches that it is known in the art to form a transistor in which a SiC active layer is separated from its gate electrode by either silicon dioxide layer or a silicon nitride layer (col. 5, lines 45-62). The use of silicon nitride in place of silicon dioxide is considered a substitution of an equivalent material and for that reason is not patentable.

***Allowable Subject Matter***

Claims 37-51 are allowed.

Claims 57-59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or suggest, either alone or in combination, a method of operating a memory device which has the electron affinity and barrier energy as instantly claimed, in combination with the additional operating steps and structural elements as claimed.

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from an examiner should be directed to Primary Examiner Allan Wilson whose telephone number is (571) 272-1738. Examiner Wilson can normally be reached 7:00-4:00 Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Thomas can be reached on (571) 272-1664. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Allan R. Wilson  
Primary Examiner  
July 6, 2005